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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **C.W.P. No. 3598 of 1982**

Date of decision: 8.8.2007

Paramjit Kaur **...Petitioner**

Versus

State of Punjab and others **...Respondents**

2. **C.W.P. No. 3570 of 1982**

Devinder Singh **...Petitioner**

Versus

State of Punjab and others **...Respondents**

3. **C.W.P. No. 3571 of 1982**

Jasbir Kaur **...Petitioner**

Versus

State of Punjab and others **...Respondents**

4. **C.W.P. No. 3732 of 1982**

Devinder Singh **...Petitioner**

Versus

State of Punjab and others **...Respondents**

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. M.L.Saggar, Senior Advocate with
Mr. J.S.Dhaliwal and Mr. Gautam Dutt, Advocates
for the petitioners.

Mr.Arvind Mittal, Additional Advocate General, Punjab
for respondents.

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RAJESH BINDAL, J.

Challenge in this bunch of four writ petitions bearing Nos.

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3570, 3571, 3598 and 3732 of 1982 is to the orders passed by Chief Sales Commissioner (Deputy Commissioner, Ludhiana) under Section 10 of the Punjab Package Deal Properties (Disposal) Act, 1976 (for short 'the Act') whereby sale of land in favour of the petitioners in auction proceedings was set aside.

Facts have been noticed from Civil Writ Petition No.3598 of 1982.

Briefly the facts, as narrated in the petition, are that large number of evacuee land situated at various places in the State of Punjab including village Khera Bet, Tehsil and District Ludhiana was lying unutilized for many years after partition of the country. The land in question was situated along with river Satluj. Initially no displaced person opted for allotment of this land in lieu of land left by them in Pakistan. Some time in 1961, all the unallotted evacuee waste land, including the land in question was transferred by the Central Government to the State of Punjab at a fixed price. This was done under a transaction popularly known as 'Package Deal'. For the disposal of this land, State Government framed the Rules for the Sale of Surplus and Rural Properties (for short 'the Rules') and appointed various officers for the disposal thereof by way of open auction or otherwise. Land measuring 78 kanals 16 marlas situated in village Khera Bet, Tehsil and District Ludhiana was put to open auction on December 5, 1963. Due process as required under the Rules was followed before the auction proceedings were conducted. It is further alleged in the petition that at the time of auction about 70 persons were present including Ex-Sarpanch and Numberdar. However, the land being totally waste and on the bank of river Satluj only a few persons participated in the auction. The bid sheet has been placed on record as Annexure P-1. After auction proceedings, the record was submitted to the competent authority, namely Settlement Officer for approval and confirmation of the bid, which was confirmed as no objection was raised by anybody. After purchase of land the petitioner made continues efforts and improved the quality of land by spending huge amount. It was after 17 years of allotment that petitioners was issued a notice by the Deputy Commissioner, Ludhiana as Chief Sales

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Commissioner under the Act, in exercise of powers conferred under Section 10 thereof. This was done in reference made to him by the Rehabilitation Department of the State. The petitioner objected to the proposed action of cancellation of sale, however, still vide order dated June 30, 1981 (Annexure P-4), Chief Sales Commissioner (Deputy Commissioner, Ludhiana) set aside the sale of the land in question in favour of the petitioners on the ground that proclamation for sale of land was defective and factum of auction is not recorded in any record maintained by the concerned Patwari. This is the order under challenge before this Court in the present petition.

Respondents have contested the petition by filing written statement controverting the relief claimed by the petitioners and further stated that petitioners have effective remedy under Section 15 of the Act. Further various discrepancies in the proclamation/Munadi/issuance of notices for auction etc. have been pointed out. It is further mentioned that husband of the petitioner (now deceased) had participated in the auction proceedings on behalf of the petitioners as Benamidar without there being any authority letter. Petitioner was not even present in auction proceedings or at any stage thereafter. Had there been auction with proper notice, land would have fetched much more. It is further submitted that infact son of the petitioner was a Member of Parliament and he managed the entire show. The discrepancies were brought to the notice of the Government, when a Committee of Legislatures known as Harchand Singh's Committee was appointed to enquire into the cases of grabbing of evacuee land by high dignitaries and other influential public men. It was on the basis of the report submitted by the Committee in May, 1973 that impugned action against the petitioners and number of other persons was initiated about seven years thereafter.

I have heared Shri M.L.Saggar, learned senior counsel appearing on behalf of the petitioners and Mr. Arvind Mittal, learned Additional Advocate General, Punjab appearing on behalf of respondents and perused the paper book.

The primary contention raised by learned counsel for the

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petitioners is that a perusal of document Annexure P-1 placed on record, which is copy of auction sheet, shows that when the auction of the property was conducted number of persons including Ex-sarpanch and Numberdar and others were present and had signed/thumb marked the auction sheet. It is further noticed therein that at the time of auction about 70 persons were present. After the auction the same was forwarded to the competent authority i.e. Tehsildar(Sales)-cum-M.O., Ludhiana and was confirmed by him in the absence of any objection thereto. He further submits that due procedure as required under the Rules applicable at the relevant time was followed before conduct of auction of the land and the price paid by the petitioners for the auction of land in question was appropriate as the same was not opted by any one for the reasons that it was situated on the bank of river Satluj. He further submits that there was no occasion for the respondents to have initiated the action against the petitioners for cancellation of sale after more than 17 years of allotment and pass order to that effect when the petitioners had improved the quality of land with their efforts and putting in a lot of labour and money. Still further it is submitted that though Section 10 of the Act is enabling provision for suo-motu exercise of power for cancellation or modification of any order passed even prior to the enforcement of the Act but the same could be only in case any person had obtained any property by way of fraud, misrepresentation or concealment of material facts and the action had to be taken within some reasonable time even if no time limit was fixed under the Act. He further submitted that it was wrong to suggest that the son of the petitioner was Member of Parliament at the time of auction as he became Member of Parliament for the first time only in 1967. To buttress his argument further the learned counsel for the petitioner referred to the reference made by Rehabilitation Department of the State to the Chief Sales Commissioner-cum-Deputy Commissioner, Ludhiana proposing cancellation of the sale of land in favour of the petitioners and submitted that even a perusal of this document shows that there is not a whisper about there being any fraud rather all what has been stated therein is the procedural lapses on the part of the officials of the department, if any. He further submitted that even the

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Chief Sales Commissioner-cum-Deputy Commissioner, Ludhiana also did not find any fraud having been committed by the petitioners rather in concluding para where the merits of the case were discussed, it was held that there was violation of Rule 5-C of the Rules on account of which the sale was vitiated by the element of fraud but there is nothing mentioned about the fraud. In the absence of which exercise of powers under Section 10(2) of the Act was totally without jurisdiction. Still further learned counsel for the petitioner relied upon two judgments of this Court in Civil Writ Petition No.5541 of 1981 Smt. Jaswant Kaur Vs. The Deputy Commissioner-cum-Chief Sales Commissioner, Ludhiana and Civil Writ Petition No.5586 of 1981 Shri Mohinder Singh Vs. The Deputy Commissioner-cum-Chief Sales Commissioner, Ludhiana decided on January 23, 1996 wherein in similar circumstances, the cancellation of sale in favour of the petitioners therein was set aside by this Court.

On the other hand, Shri Arvind Mittal, learned Additional Advocate General, Punjab by reiterating the submissions made in the written statement submitted that it was infact a case of fraud. The petitioners were influential persons. The discrepancies came to the notice of the Government when Harchand Singh's Committee was appointed and on the basis thereof, corrective actions were initiated. The petitioners got the huge chunk of land for peanuts. Participation of only 2-3 persons in the auction proceedings shows that these were sham proceedings. Accordingly, no fault can be found with the impugned order and writ petition may be dismissed being without any merit.

The provisions of Section 10 of the Act are reproduced hereunder for ready reference:-

> "**10. Power of Revision - (1)** The Chief Sales Commissioner may at any time call for the record of any proceedings under this Act in which a Tehsildaar (Sales) or a Naib-Tehsildar (Sales) or Sales Commissioner [in his district] has passed an order for the purpose of satisfying himself to the legality or propriety of any such order and may pass such order in relation thereto as he may deem fit.

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(2) Without prejudice to the generality of the foregoing power under sub-section (1), if the Chief Sales Commissioner is satisfied that any order whether passed before or after the commencement of this Act, for the transfer of package deal property to any person, has been obtained by him by means of fraud, false representation or concealment of any material facts, then, notwithstanding anything contained in this Act, the Chief Sales Commissioner may pass an order cancelling or modifying the order of such transfer.

(3) No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard.

(4) Any person aggrieved by an order made under sub-section (2) may, within thirty days from the date of the order, make an application for the revision of the order, in such form and manner as may be prescribed, to the [Commissioner and the Commissioner] may pass such order thereon as it think fit."

A perusal of the above referred provisions show that on Chief Sales Commissioner being satisfied that order whether pass before or after the commencement of Act for transfer of Package Deal Property to any person having been obtained by means of fraud, false representation or concealment of any material facts, the same could be cancelled or modified. In the present case, a perusal of the reference made by the Rehabilitation Department to the Chief Sales Commissioner(Annexure P-2) shows that the entire thrust is on the procedural defects in the issuance of public notice or entries in the Roznamcha etc. Similar is the position with regard to order passed by the Chief Sales Commissioner where merely averment has been made towards the end to the effect that sale is vitiated by the element of fraud, however, nothing has been pointed out. Relevant para 10 of the impugned order is extracted below:-

"Coming to the merits of the case, the main contention of the counsel for the State is that Shri Shamsher Singh had indulged in proxy bidding without any legal authority from the

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respondent and that there was no real contest at the time of the auction. As regards this issue there is some weight in the argument of the counsel for the respondent that in view of the close relationship between Shri Shamsher Singh and the respondent, the lack of formal letter of authority should not be viewed too seriously. As regards the contention of the counsel for the State the proclamation was defective and hence there was no real contest at the time of the auction, a perusal of the record shows some serious discrepancies in the date on which the proclamation was done for this auction sale. The factum of the auction is also not recorded in any record maintained by the concerned Patwari. Consequently, a mandatory requirement under rule 5(c) of the Package Deal Properties Rules has not been complied with. This omission to give proper notice before the auction hits at the very root of the sale and vitiates it. Under these circumstances on the basis of the record before me, I am not convinced that proper proclamation was done before the auction sale was conducted and the sale is vitiated by the element of fraud. The sale in favour of the respondent is accordingly set aside."

Here also main thrust is only on the procedural defects or the violation of Rule 5(c) of the Rules, which provides for procedure for disposal of the property. Accordingly, I find that the ingredients of Section 10 of the Act for initiation of action against the petitioners are not forthcoming in the present case, which could enable the authorities to pass an order for cancellation of sale in favour of the petitioners. It is settled law that an order passed by a quasi-judicial authority cannot be supplemented or justified with any material which does not form part of the reasoning adopted by the authority. The delay in initiation of action by the respondents in the present case is also a circumstances which weakens the stand of the respondents. Accordingly, I find that the impugned order suffers from legal infirmities and deserves to be quashed.

The view I am taking is supported by earlier two judgments of

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this Court cited by learned counsel for the petitioners in the cases of Smt. Jaswant Kaur and Shri Mohinder Singh (Supra), where also almost similarly worded orders by the Chief Sales Commissioner were set aside by this Court.

Accordingly, the writ petitions are allowed and the impugned orders are quashed with no order as to costs.

August 8, 2007 **(Rajesh Bindal)**
Pka **Judge**